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or Punishment

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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 351st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.351/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Iceland (CAT/C/37/Add.2; HRI/CORE/1/Add.26) (continued)

1. At the invitation of the Chairman, the members of the delegation of Iceland resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation of Iceland to reply to the questions put by members of the Committee.

3. Ms. THORARENSEN (Iceland), taking up first the question of why the Convention against Torture had not been incorporated into Icelandic legislation and why the word "torture" was not more clearly defined therein as a criminal offence, said that for several decades past Iceland had ensured the effective application of the international human rights instruments to which it had acceded by adapting its domestic legislation to those instruments. In certain cases, when there had been a risk of contradiction between such international instruments and domestic law, Iceland had gone so far as to make amendments to its Constitution or even revise its provisions in depth in order to bring them into line with those of international human rights instruments. Thus, it had incorporated the European Convention on Human Rights into its Constitution, and was thus able to interpret legal terms that did not feature in its legislation by taking the international rules as a basis. Accordingly, even though torture was not expressly mentioned in the general Penal Code, it was beyond any doubt that the acts specified in article 1 of the Convention were offences punishable under Icelandic law.

4. For Iceland, the Convention was an extremely useful instrument that enabled it to interpret the necessarily very general provisions of its Constitution regarding people's right to be protected against torture or other cruel, inhuman or degrading treatment or punishment. Iceland had declared, in that connection, that it recognized the Committee's competence to consider communications from individuals, in accordance with article 22 of the Convention.

5. It had been asked why torture did not feature among the possible grounds for refusing a demand for extradition. The Extradition Act of 1984, under which a person could be extradited to a State where he or she was suspected of having committed a punishable offence or had been indicted or sentenced for such an offence, allowed for some exceptions which were indicated in paragraph 53 of the initial report (CAT/C/37/Add.2). The notion of torture was, incidentally, a relatively new legal concept in Iceland, for it had been introduced only when the European Convention on Human Rights had been incorporated into the Constitution. The main reason why torture was not mentioned in the Extradition Act was that it occurred very rarely in Iceland and was normally covered by the legal provisions making inhuman or degrading treatment punishable. Nor, for that matter, did torture feature among the

acts constituting grounds for compensation, being already covered by the provisions applying to unlawful measures resorted to by the police or other authorities.

6. Her delegation had also been asked to give the Committee more information about the training of police officers and prison warders. As indicated in paragraphs 95 to 100 of the initial report (CAT/C/37/Add.2), training of police officers at the national police school took two years, including two semesters of theoretical training and two of practical training. With regard to prison warders, she could for the moment say only that there were tentative plans to provide for their training at the national police school.

7. The Committee had asked to be told more about the procedure applicable in the case of persons committed to hospital by order. The law on legal capacity provided for hospitalization only for a limited duration and subject to strict conditions in the case of persons suffering from serious psychological illness or acute forms of alcoholism or drug addiction. According to the procedure applicable, the commitment order must be backed by a medical opinion prescribing such a measure to protect the health of a person suffering from a severe mental illness or disorder. The stay in hospital could not exceed 48 hours, except by decision of the Ministry of Justice, which could extend it to up to 21 days on the advice of a psychiatrist. Only the courts could decide to extend hospitalization beyond that limit. What was more, the Constitution guaranteed the right of any person deprived of freedom to ask a court to decide on the legality of the measure applied to him or her.

8. In answer to the request for statistics concerning remand prisoners held in solitary confinement, she stated that in 1997, out of 71 prisoners put into isolation for the requirements of the pre-trial investigation, 38 had been held in solitary confinement for a maximum period of 10 days and only 7 for a maximum of 41 days. Three prisoners had been put in solitary confinement for between 2 and 12 hours for disciplinary reasons.

9. It had been asked why Iceland had waited so long to accede to the Convention against Torture. As she had already said, torture had not been a major issue in Iceland; in view, however, of the growing interest awakened by the question of whether Iceland was fulfilling its obligations under other human rights instruments, the Government had finally decided to take the necessary legislative measures for the ratification of the Convention.

10. A member of the Committee had said that the initial report of Iceland had been submitted very late. She would point out that the deadline for the submission of her country's report had been November 1997 and that it had been submitted on 10 February 1998, which added up to only a slight delay.

11. Clarifications had been requested concerning article 131 of the Penal Code on the criminal responsibility of judges, and in particular as to how that provision could be reconciled with the principle of the independence of the judiciary. That article did indeed provide that a judge or other official who employed unlawful methods in conducting public criminal proceedings was liable to a penalty of three months' imprisonment. That provision dated from the Penal Code of 1940, in force at a time when judges

played an important part in investigating criminal cases and were involved in interrogating suspects. Under the system currently applicable, judges no longer took part in the investigation of criminal cases.

12. Fuller information had been requested about the concern expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, after its visit to Iceland, about the medical care afforded to prisoners. Firstly, since the beginning of 1998 it was the Ministry of Health and no longer the Ministry of Justice which dealt with the health of prisoners. The European Committee had considered that the medical care provided for prisoners, in particular the psychiatric services, was less than ideal and that the directives issued by the Ministry of Health were insufficient or vague. Since then the Icelandic authorities had improved the situation in most of the areas concerned, taking into account the European Committee's comments about the organization of shifts for doctors and nurses and the assignment of psychiatrists. More emphasis would be laid on preventive work and promotion of healthy lifestyles and on treatment of prisoners with drug and alcohol problems.

13. Questions had been put concerning suicides of prisoners. At the time of the visit of the European Committee for the Prevention of Torture, two prisoners serving sentences in the main prison had committed suicide, but neither of them had been in solitary confinement at the time. The Ministry of Justice had appointed a committee of independent experts to conduct an inquiry into those suicides and submit to it proposals for preventing further suicides in prisons. On another point, her delegation understood that the staff of Icelandic hospitals did not use special equipment to control mentally ill patients, but drugs and physical restraint.

14. Regarding asylum seekers, it was the immigration office which decided to grant or refuse political asylum. Asylum seekers must be informed of the fact that they could appeal against that decision to the Ministry of Justice, the procedure for such appeal being set out in the Immigration Act and the Administrative Procedures Act. Iceland applied to refugees the provisions of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, both of which it had ratified.

15. As to whether a remand prisoner could at any time refer to a court concerning his or her situation, that right was protected under article 108 of the Code of Criminal Procedure and the person concerned could be assisted by counsel in bringing the matter before the court. A person placed in solitary confinement for disciplinary reasons could not, however, resort to that procedure, but could appeal against the action taken by the prison administration to the Ministry of Justice.

16. Several members of the Committee had remarked that Icelandic law contained no specific provision prohibiting consideration by the courts of evidence obtained under torture. That was true, but the Icelandic Government was of the opinion that the law concerning the admission of evidence in criminal cases and the principle according to which the judge was completely free to evaluate items of evidence ensured that a person could not be found guilty on the strength of confessions obtained under torture without confirmation of those confessions by the accused before the court and in the

absence of other evidence of guilt. The principle of direct introduction of evidence meant that police reports had only limited evidential value if they were not supported by statements made before the court.

17. Regarding paragraph 36 of Iceland's core report (HRI/CORE/1/Add.26), she wished to make it clear that the prosecuting powers of the police commissioner were limited to the district concerned and to the offences enumerated in that paragraph, the courts having, of course, exclusive competence to decide upon criminal charges.

18. Mr. ZUPANČIČ wondered whether the Icelandic delegation could say whether there existed in Iceland any regulations governing the use of physical restraint for controlling mentally ill persons and could give particulars about the two cases of suicide that had occurred in the main prison.

19. Mr. GEIRSSON (Iceland) said he was not for the moment able to give further information about the treatment of mentally ill persons. He added that there had been three suicides, not two, at Iceland's main prison, but that the third had happened after the visit of the European Committee for the Prevention of Torture.

20. The CHAIRMAN suggested that the Icelandic delegation should send the Committee at a later date a note on any regulations governing the use of physical restraint for controlling mentally ill persons.

21. Mr. SØRENSEN raised a question on behalf of Mr. CAMARA, absent for the moment, who had read in paragraph 55 of the core report of Iceland (HRI/CORE/1/Add.26) that Icelandic domestic law was interpreted in accordance with international law but that in case of conflict it was generally domestic law that prevailed. Such a provision was surprising and unusual and some clarifications on the subject would be welcome.

22. Ms. THORARENSEN (Iceland) explained that when an international convention was ratified by her country, that convention was binding for it but did not necessarily form part of its domestic legislation and was therefore not applied directly by the courts. That situation was indeed typical of all dualistic legal systems. Even where the legislation had been modified to put fully into effect all the provisions of human rights conventions, conflicts had arisen on one or two occasions, in particular in the application of the European Convention on Human Rights, some of whose provisions were not compatible with Icelandic legislation. Consequently, to prevent such conflicts from arising again, the Constitution had been amended to incorporate all the principles proclaimed in the main human rights instruments, including notably the Convention against Torture. As those principles thenceforth had constitutional status, they prevailed in cases where there was a conflict with domestic legislation. An international rule such as the prohibition of torture was thus protected by the Constitution, which took precedence over other laws.

23. The CHAIRMAN thanked the Icelandic delegation for the clarifications provided and invited it to return shortly and hear the Committee's concluding observations.

The public part of the meeting rose at 4.45 p.m.